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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

TIFFANY C. JOHNSON,

Defendant and Appellant.

B204842

(Los Angeles County
Super. Ct. No. BA274379)

APPEAL from a judgment of the Superior Court of Los Angeles County, Luis A. Lavin, Judge. Affirmed with modifications.

Dwyer & Biggs and John P. Dwyer, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Victoria B. Wilson and Erika D. Jackson, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

Defendant, Tiffany C. Johnson, appeals from a judgment after a jury convicted her of felony murder (Pen. Code,¹ § 187, subd. (a)) (count 1) and second degree robbery (§ 211) (count 2). The jury also found to be true an allegation that a principal was armed with a firearm (§ 12022, subd. (a)(1)) in the commission of counts 1 and 2. Defendant was sentenced to a total of 30 years to life consisting of: 25 years to life for the murder (count 1); one-year for the firearm enhancement to be served consecutively; and three years for the robbery (count 2) plus one-year for the firearm enhancement both to be served consecutively. Defendant was ordered to pay: a \$200 restitution fine (§ 1202.4, subd. (b)); a \$200 parole revocation restitution fine which was stayed, (§ 1202.45); and a \$20 court security fee. (§ 1465.8, subd. (a)(1).) Defendant was awarded no presentence custody credit. Defendant argues: the trial court should have stayed the sentence on count 2 as well as the firearm enhancement pursuant to section 654, subdivision (a); have awarded her 1,131 actual presentence custody days; and not have ordered her to register as a narcotics offender. We affirm with modifications.

II. FACTUAL BACKGROUND

We view the evidence in a light most favorable to the judgment. (*Jackson v. Virginia* (1979) 443 U.S. 307, 319; *People v. Elliot* (2005) 37 Cal.4th 453, 466; *Taylor v. Stainer* (9th Cir.1994) 31 F.3d 907, 908-909.) On September 9, 2004, Marc Sandridge checked into the Royal Hawaiian Motel on La Brea Avenue in Los Angeles at about 11:30 p.m. The motel is owned by Chandrakant and Rita Patel. Mr. Sandridge rented room 103 for two people for one night. About half an hour later, Mr. Patel was cleaning

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All further statutory references are to the Penal Code unless otherwise noted.

room 102. Mr. Patel heard Mr. Sandridge and defendant quarreling and shouting. Room 102 was adjacent to room 103. Mr. Patel heard the door in room 103 slam onto the wall. Mr. Patel looked out the doorway of room 102. Mr. Patel saw defendant run out of room 103. Mr. Patel saw Mr. Sandridge, who was clad only in boxer shorts, chasing defendant through the bushes.

Derby Scott was walking south on La Brea Avenue at around 11:30 p.m. near the motel. Ms. Scott saw defendant running from the motel with a bundle of clothes followed by Xochitle De La Torre. Ms. Scott knew Ms. De La Torre. Ms. Scott had bought drugs from Ms. De La Torre in the past. Ms. De La Torre was running behind defendant. Mr. Sandridge was chasing both defendant and Ms. De La Torre and demanding that they stop. Mr. Sandridge also said, "Give me my clothes back." Mr. Sandridge was closer to Ms. De La Torre. Ms. Scott saw defendant drop something on the ground. Ms. De La Torre picked it up off the ground. Defendant and Ms. De La Torre turned and looked at Ms. Scott. Right after that, Ms. Scott heard a gunshot and saw Mr. Sandridge staggering back to the motel. Mr. Sandridge died from a gunshot wound in his chest from a bullet that went through his right arm.

Ms. Scott knew that Ms. De La Torre carried a gun. In the past, Ms. De La Torre carried a gun in the front of her pants and on her side. Ms. Scott was a prostitute and over the years had seen people running out of motels with people's clothes in order to regain their wallets, money, or other items of value. Ms. Scott testified that the scheme is to get the "guy" in a room, take his things, and run out. According to Ms. Scott, the thought is that the victim is not going to come running out of the room without wearing his clothes.

Defendant and Ms. De La Torre ran through a Taco Bell parking lot. Defendant was still carrying Mr. Sandridge's clothes. Ms. De La Torre dropped her keys on La Brea as they ran. The keys were found a few feet away from some blood drops. North of Ms. De La Torre's keys, the police also found a bullet casing and further north a man's watch was found. Defendant discarded Mr. Sandridge's pants a few blocks away. Defendant also discarded an Adidas shoe which belonged to her. Defendant had left her

other Adidas shoe in the motel room 103. When police searched room 103, it was in disarray and there was a broken wine bottle on the bed. Defendant's fingerprint was on the neck of the wine bottle. The autopsy report indicated that Mr. Sandridge had a laceration above his right eyebrow from a blunt force object.

During the trial, defendant admitted that she was in the motel room. Defendant and Ms. De La Torre had been drinking and smoking marijuana since about 12 p.m. on September 9, 2004. Later in the day, defendant went with Ms. De La Torre to meet Mr. Sandridge. Mr. Sandridge was Ms. De La Torre's friend. The three of them eventually ended up at the motel. Mr. Sandridge wanted them to test some marijuana he was going to get from one of his clients. Defendant, Mr. Sandridge, and Ms. De La Torre all went into room 103. The two women drank a whole bottle of wine that he had purchased. Defendant got the wine out of Mr. Sandridge's car. Defendant claimed she took off her shoes while she was in the motel because she was sitting "Indian style" on the bed watching television. She went into the restroom and vomited in the shower because of all the alcohol she had consumed. She turned on the shower. When she came out of the restroom, Mr. Patel told her to leave because they were making too much noise. She was alone in the room.

As she grabbed her things to leave, Mr. Sandridge returned to the room wearing only his shorts. Defendant walked out of the room and saw Ms. De La Torre on the sidewalk. Ms. De La Torre began running along with defendant. As they were running, Ms. De La Torre and defendant spoke. Defendant was told to look behind herself. Mr. Sandridge was chasing defendant and Ms. De La Torre. Defendant began running south on La Brea and did not see Ms. De La Torre until they were in the Taco Bell parking lot. Defendant heard a gunshot and thought someone was shooting at them. Defendant and Ms. De La Torre continued to run. Eventually, they fled to defendant's home. While they were there, Ms. De La Torre admitted she shot Mr. Sandridge. Ms. De La Torre had a bruised eye and said she shot Mr. Sandridge because he hit her.

III. DISCUSSION

A. Stay of Execution Sentencing as to Robbery

Defendant contends and the Attorney General concedes that the trial court should have stayed execution of the robbery sentence pursuant to section 654, subdivision (a) which provides: “An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.” Section 654, subdivision (a) precludes multiple punishments for convictions which arise out of an indivisible course of conduct which was committed pursuant to a single criminal intent or objective. (*People v. Hester* (2000) 22 Cal.4th 290, 294; *People v. Latimer* (1993) 5 Cal.4th 1203, 1207-1209; *Neal v. State of California* (1960) 55 Cal.2d 11, 19; see also *People v. Centers* (1999) 73 Cal.App.4th 84, 98; *People v. Akins* (1997) 56 Cal.App.4th 331, 338-339; *People v. Liu* (1996) 46 Cal.App.4th 1119, 1135; *People v. Hutchins* (2001) 90 Cal.App.4th 1308, 1312.) A trial court’s order imposing multiple sentences is reviewed for substantial evidence. (*People v. Osband* (1996) 13 Cal.4th 622, 730-731; *People v. Hutchins, supra*, 90 Cal.App.4th at p. 1312; *People v. Herrera* (1999) 70 Cal.App.4th 1456, 1466; *People v. Monarrez* (1998) 66 Cal.App.4th 710, 713.)

In this case, the evidence showed that defendant and De La Torre had one objective, which was to rob Mr. Sandridge. He was killed in order to facilitate the robbery. The prosecution’s theory was that the killing was the result of a robbery gone awry. Defendant’s sentence as to the robbery plus the section 12022, subdivision (a)(1) enhancement (count 2) must be stayed pursuant to section 654, subdivision (a). (*People v. Harrison* (1989) 48 Cal.3d 321, 335, see also *People v. Britt* (2004) 32 Cal.4th 944, 951-952.)

B. Presentence Custody Credits

Defendant contends and the Attorney General concedes that the trial court erroneously failed to award defendant actual presentence custody credits of 1,131 days. The trial court's failure to award the proper amount of credits is an unauthorized sentence which may be corrected at any time even if no objection was interposed in the trial court. (*People v. Reeves* (2005) 35 Cal.4th 765, 774; *People v. Smith* (2001) 24 Cal.4th 849, 854.) Defendant was arrested on November 12, 2004, and sentenced on December 17, 2007, a total of 1,131 days. The trial court refused to award any presentence custody credit. Defendant was entitled to actual presentence custody credits pursuant to sections 2900.5, subdivision (a). (*People v. Taylor* (2004) 119 Cal.App.4th 628, 646-647; *People v. McNamee* (2002) 96 Cal.App.4th 66, 74; *People v. Hernandez* (2001) 88 Cal.App.4th 1353, 1365-1367.) The abstract of judgment is modified to reflect an award of 1,131 days of actual presentence custody credits. Defendant is not entitled to any presentence conduct credits. (§2933.2; *People v. Reyes* (2008) 165 Cal.App.4th 426, 437.)

C. Registration as a Narcotics Offender

Both the minute order from the sentencing hearing and the abstract of judgment indicate that defendant must register as a narcotics offender. (Health & Saf. Code, § 11590.) However, the trial court did not orally impose the requirement at the sentencing hearing. Defendant argues that the abstract of judgment must be amended to strike the registration requirement because the trial court did not orally impose such an obligation on her at the sentencing hearing. We agree. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185-186; *People v. Mesa* (1975) 14 Cal.3d 466, 469, 471.) As an alternative argument, defendant asserts Health and Safety Code section 11590 subdivision (a) does not list murder and robbery as offenses for which the trial court has authority to impose a narcotics registration requirement. We agree. (See *In re Luisa Z.* (2000) 78 Cal.App.4th 978, 984; *People v. Brun* (1989) 212 Cal.App.3d 951, 955.) As a result, the requirement

that defendant register as a narcotics offender must be stricken from the abstract of judgment. (*People v. Mitchell, supra*, 26 Cal.4th at pp. 185-186; *People v. Mesa, supra*, 14 Cal.3d at pp. 471-472.)

IV. DISPOSITION

The sentence is modified to stay execution of the entire sentence as to count 2 pursuant to section 654, subdivision (a). The abstract of judgment is modified to reflect 1,131 days of actual presentence custody credits and to strike the narcotics offender registration requirement. Upon remittitur issuance, an amended abstract of judgment is to be prepared reflecting the changes as set forth in this opinion and forwarded to the Department of Corrections and Rehabilitation.

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TURNER, P. J.

We concur:

ARMSTRONG, J.

MOSK, J.